

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

: **ATTORNEY'S AFFIRMATION**

v

: **05 Cr. 746 (VM)**  
: **08 CIV.1932 (VM)**

ERIK W. NICHOLSON,  
Defendant.

: **USDS SDNY**  
: **DOCUMENT**  
: **ELECTRONICALLY FILED**  
: **DOC #:** \_\_\_\_\_  
: **DATE FILED:** 7-17-08

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I, JOHN J. BYRNES, hereby affirm ~~under penalties of perjury~~  
pursuant to 28 U.S.C. § 1746:

1. I am the attorney-in-charge of the Federal Defenders of  
New York, Inc. Southern District of New York office.

2. Our office was assigned to represent ERIK W. NICHOLSON.  
I represented Mr. Nicholson at his original presentment and  
subsequently Christopher Flood, Esq. of my office represented Mr.  
Nicholson. Mr. Flood represented Mr. Nicholson at the guilty  
plea allocution and at the sentencing.

3. Mr. Flood left our office approximately a year ago and  
is presently working as an attorney in New Orleans, Louisiana. I  
spoke to him by telephone on today's date.

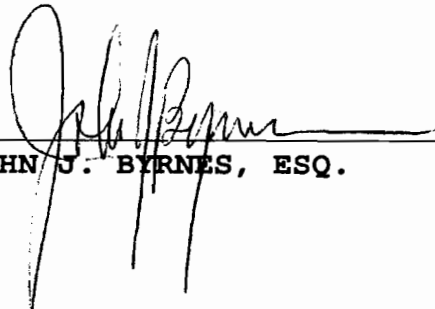
4. I reviewed our file on Mr. Nicholson's case on today's  
date.


5. Mr. Nicholson plead guilty based on a plea agreement  
which included a waiver of his rights to a direct appeal or to  
litigate under Title 28 United States Code, Section 2255 and/or  
Section 2241.

6. In my conversation with Mr. Flood, he specifically recalls explaining in detail to Mr. Nicholson the fact that the plea agreement contained a waiver of appellate rights. He also marked in closing our file a notation of no appeal. Mr. Flood stated to me that Mr. Nicholson did not request him to file a notice of appeal at the time of sentence or at any time thereafter. Mr. Flood further stated to me that if Mr. Nicholson had requested him to file a notice of appeal he would have done so as is his normal practice.

Dated: New York, New York

July 9, 2008

  
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JOHN J. BYRNES, ESQ.

<i>The Clerk of Court is directed to file in the docket of case number 08 Civ. 1932 the Attorney's Affirmation set forth above</i>	
SO ORDERED:	
7-15-08	
DATE	VICTOR MARRERO, U.S.D.J.